

THE LAW OFFICE OF NATHAN R. ZELTZER, Ltd.
 Nathan R. Zeltzer, Esq
 State Bar No. 5173
 232 Court Street
 Reno, Nevada 89501
 (775) 786-9993
nrzbn@yahoo.com
Attorney for Debtors

ECF filed: 4/7/21

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA

* * * * *

IN RE:)	Case No.	BK-20-51150-BTB
)	CHAPTER 13	
JOSE R. MARTINEZ-CHICAS,)	<u>OBJECTION TO THE PROOF OF</u>	
ARACELI G. DIAZ,)	<u>CLAIM OF SYLVIA LLOYD</u>	
)	<u>Claim Number 15</u>	
Debtors,)	Hearing Date:	May 27, 2021
)	Hearing Time:	1:30pm
	/	Estimated Time:	5 min.

The Debtors, JOSE R. MARTINEZ-CHICAS and ARACELI G. DIAZ (hereinafter “Debtors”) by and through their counsel, Nathan R. Zeltzer, Esq. object to the proof of Claim Number 15 of creditor Sylvia Lloyd (hereinafter “Creditor”). This objection is brought pursuant to the Points and Authorities included herein, and on further oral argument of counsel as may be presented at the time of hearing.

1 **POINTS AND AUTHORITIES**

2 **FACTS**

3 This case was filed on or about December 22, 2020. The plan was filed on the same date.
4
5 The §341 meeting of creditors was held on February 10, 2021 and was concluded. The plan is
6 pending confirmation and that hearing date is set for April 23, 2021.

7 Creditor has filed a proof of claim in the amount of \$59,000.00. This claim was filed on
8 February 23, 2021. It is docketed as claim #15. A copy of the claim is attached hereto as Exhibit
9 “A” and incorporated herein by reference. The claim states that part of the amount owed includes a
10 secured claim for \$17,425.00. The secured portion of the claim states: “Basis of perfection: primary
11 person on loan and title to the vehicle”. See page 2, section 9 of Exhibit “A”, supra. The Creditor
12 claims the remaining amount of the claim is owed due to “money loaned; unpaid wages from the
13 Corazon entity. See page 2, section 8 of Exhibit “A”, supra.
14

15 There is no documentation attached with this proof of claim. It is impossible to tell on the
16 face of the proof of the claim what documentation the Creditor asserts creates a security interest in
17 the subject vehicle. Additionally, there is no additional information regarding the money loaned and
18 unpaid wages from the Corazon entity to validate this debt. Without this information the debtor
19 cannot determine if this amount is a valid part of the claim.
20

21 **LEGAL ARGUMENT**

22 The Federal Rules of Bankruptcy Procedure states that an objection to a claim shall be in
23 writing and filed. F.R. Bankr. P. 3007.
24

25 The Bankruptcy Code provides that a proof of claim is deemed allowed unless a party in
26 interest objects. 11 U.S.C. §502(a). The burden of proof is a substantive aspect of a claim that
27 comprises an essential element of the claim itself. Raleigh v. Ill. Dep’t of Revenue, 530 U.S. 15,
28

20-21. The general common law rule regarding burdens of proof the plaintiff has to show an indebtedness or obligation to pay. 70 C.J.S. *Payment* §73.

It is generally held that failure to attach writings to a proof of claim does not require a bankruptcy court to disallow the claim on that basis alone. Rather, the claim is not entitled to be considered prima facie evidence of the claim's validity. In re Heath, 331 B.R. 424, 432 (9th Cir. BAP 2005). Furthermore, to defeat the claim, the objector must come forward with sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." Wright v. Holm (In re: Holm), 931 F.2d 620, 623 (9th Cir. 1991).

A creditor's claim must be enforceable to be allowed. A "claim" is defined as a "right to payment." 11 U.S.C. §101(5). A "right to payment" is "nothing more nor less than an enforceable obligation." In re Hess, 404 B.R. 747, 749 (Bankr. S.D.N.Y., 2009) citing *Johnson v. Home State Bank*, 501 U.S. 78, 83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991). A claim may be disallowed when it is unenforceable under applicable law. 11 U.S.C. §502(b)(1).

The basis of this objection is that the claim fails to provide adequate documentation to allow the Debtors to determine if portions of the claim, or the whole claim is valid. Without this information the Debtors cannot determine if they have valid defenses to the proof of claim.

Additionally, the Debtors believe the amount stated on the claim overstates the amount that they may owe, if any, on this debt. The Debtors request the creditor provide additional information to substantiate her claim. If the creditor fails to produce additional information to clarify her proof of claim Debtors requests that the objection to the proof of claim be sustained.

III

III

1 WHEREFORE, Debtors pray for the following relief:


- 2 1. That Creditor produce additional information to substantiate her demand for a secured
3 claim, and additional information to clarify her claim.
4
5 2. If Creditor fails to produce the additional information to support her claim then this
6 Objection to Proof of Claim should be sustained.
7
8 3. That the Debtors have such other further relief as is just and reasonable under the
9 circumstances.

10 Dated this 5th day of April, 2021.

/s/ Nathan R. Zeltzer
Nathan R. Zeltzer
Attorney for Debtors

EXHIBIT "A"

EXHIBIT "A"

Fill in this information to identify the case:	
Debtor 1	<u>JOSE R. MARTINEZ-CHICAS</u>
Debtor 2 (Spouse, if filing)	<u>ARACELI G. DIAZ</u>
United States Bankruptcy Court for the:	<u>NORTHERN District of NEVADA</u> 
Case number	<u>20-51150-btb</u>

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both, 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>SYLVIA LLOYD</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>WILLIAM A. BAKER, ESQ.</u> Name <u>PO BOX 33354</u> Number Street <u>RENO NEVADA 89533</u> City State ZIP Code Contact phone <u>1-775-345-2713</u> Contact email <u>bb2713@charter.net</u>	Where should payments to the creditor be sent? (if different) <u>WILLIAM A. BAKER, ESQ.</u> Name <u>PO BOX 33354</u> Number Street <u>RENO NV 89533</u> City State ZIP Code Contact phone <u>1-775-345-2713</u> Contact email <u>bb2713@charter.net</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 59,000.00. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.
moneys loaned; unpaid wages from Corazon entity

9. Is all or part of the claim secured? ☐ No
☒ Yes. The claim is secured by a lien on property.
 Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☒ Motor vehicle
☐ Other. Describe: 2014 chevy silverado pickup truck
 Basis for perfection: primary person on loan and title to the vehicle
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
 Value of property: \$ 17,425.00
 Amount of the claim that is secured: \$ 17,425.00
 Amount of the claim that is unsecured: \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
 Amount necessary to cure any default as of the date of the petition: \$ 0.00
 Annual Interest Rate (when case was filed) _____ %
☒ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 357i.

Check the appropriate box:

☐ I am the creditor.☒ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02/23/2021
MM / DD / YYYY

William A. Baker, Esq.
Signature

Print the name of the person who is completing and signing this claim:

Name	<u>William</u>	<u>A.</u>	<u>Baker</u>
	First name	Middle name	Last name
Title	<u>Attorney</u>		
Company	<u>Law Offices of William A. Baker</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>PO Box 33354</u>		
	Number	Street	
	<u>Reno.</u>	<u>Nevada</u>	<u>89533</u>
	City	State	ZIP Code
Contact phone	<u>1-775-345-2713</u>		Email <u>BB2713@CHARTER.NET</u>